

EXHIBIT “D”

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CASE NO. 2:09-cv-00135-TJS

CHAWEZI MWANTEMBE, MARGARET
MUNTHALI and FERN RUTBERG on
behalf of themselves and
all others similarly situated,
Plaintiffs,
vs.
TD BANK, N.A., et al.
Defendants.

Oral deposition of ANGELO
CAPIZZI, taken at Silverman & Fodera,
P.C., 1835 Market Street, 26th Floor,
Philadelphia, Pennsylvania, on
Tuesday, March 16, 2010, commencing
at approximately 11:02 a.m., before
JANICE D. BURNESS, a Registered
Professional Reporter, Certified
Court Reporter, and Notary Public,
pursuant to notice.

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<p>1 APPEARANCES: 2 MICHAEL P. LALLI, ESQUIRE 3 mlalli@civilrights.com 4 SILVERMAN & FODERA, P.C. 5 1835 Market Street, 26th Floor 6 Philadelphia, Pennsylvania 19103 7 215-561-2100 8 Appear on behalf of Plaintiffs 9 10 MICHAEL BERMAN, ESQUIRE 11 michael@meberman.com 12 310 Riverside Boulevard 13 Suite 31 14 Long Beach, New York 11561 15 516-320-9076 16 Appear on behalf of Plaintiffs 17 18 BARAK A. BASSMAN, ESQUIRE 19 bassman@pepperlaw.com 20 STEPHEN G. HARVEY, ESQUIRE 21 harveys@pepperlaw.com 22 PEPPER HAMILTON, LLP 23 3000 Two Logan Square 24 18th & Arch Streets 25 Philadelphia, Pennsylvania 19103 26 215-981-4000 27 Appear on behalf of Defendants 28 29 EXAMINATION INDEX 30 31 ANGELO CAPIZZI 32 BY MR. BASSMAN 3 33 BY MR. LALLI 89</p>	<p>1 I know sometimes in 2 conversation we tend to answer 3 questions or communicate with 4 gestures, shrugs, nods, uh-huhs. She 5 doesn't have a keystroke for any of 6 that, so I'll ask that all of your 7 answers to my questions be verbal. 8 A. Understood. 9 Q. Also, at any time if you 10 don't understand a question that I 11 ask you, please let me know and I'll 12 rephrase. If you answer my question, 13 I'm going to assume you understood 14 it. 15 A. Very well. 16 Q. Also, at any point if you 17 would like to take a break, please 18 let me know. You are not a prisoner 19 here. You know, you are not stuck at 20 some black site with the CIA. If you 21 need a break, just let me know. I'll 22 try to wrap up what I'm doing as fast 23 as I can so we can get you a break. 24 And really I encourage you,</p>
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>
<p style="text-align: center;">Page 3</p> <p>1 ANGELO CAPIZZI, having been 2 duly sworn, was examined and 3 testifies as follows: 4 THE COURT REPORTER: Usual 5 stipulations? 6 MR. LALLI: We're going to 7 have him read and sign. 8 MR. BASSMAN: That's fine. 9 EXAMINATION 10 BY MR. BASSMAN: 11 Q. Good morning, Mr. Capizzi. 12 A. Good morning. 13 Q. My name is Barak Bassman; 14 I'm an attorney for the bank in this 15 case. We met just a minute ago. 16 I want to go over just a 17 few ground rules for this morning's 18 deposition that will make things go a 19 little smoother, and then we'll get 20 into the substance of the 21 questioning. 22 First, as you can see, the 23 court reporter is writing down 24 everything that we are saying.</p>	<p style="text-align: center;">Page 5</p> <p>1 please feel free to take as many 2 breaks as you want. It will not make 3 the day go faster or slower. 4 A. Okay. 5 Q. Could you please state your 6 full name and address for the 7 record. 8 A. Angelo Patrick Capizzi. My 9 address is 9141 Ellie Drive, 10 E-L-L-I-E, Philadelphia, 11 Pennsylvania, 19114. And I also use 12 another address; it's 10 Holiday Road 13 in Ortley, O-R-T-L-E-Y, Beach, New 14 Jersey. 15 Q. In what state are you 16 registered to vote, sir? 17 A. Pennsylvania. 18 Q. And what state issues your 19 driver's license? 20 A. Pennsylvania. 21 Q. Have you ever been a 22 registered voter in New Jersey? 23 A. No. 24 Q. Have you ever had a</p>

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1 driver's license from the state of 2 New Jersey? 3 A. Yes. 4 Q. When was that? 5 A. I'm going to guess I 6 changed it over probably somewhere 7 around 2000, in that area. But 8 that's a guess. 9 Q. So since about 2000 your 10 driver's license has been from 11 Pennsylvania? 12 A. I would say that's about 13 right. 14 Q. Do you have any nicknames 15 or aliases you go by? 16 A. No. 17 Q. A question I have to ask, 18 so don't take this personally: Are 19 you under the influence of drugs or 20 alcohol right now? 21 A. No. 22 Q. Are you taking any 23 medications that could interfere with 24 your ability to remember events?	1 A. Right. And that was a 2 while ago. 3 Q. When did you graduate from 4 high school? 5 A. 1990. 6 Q. And from where? 7 A. Paramus Catholic Boys High 8 School. 9 Q. Is that in Paramus, New 10 Jersey? 11 A. It is. 12 Q. And do you have any 13 education after high school? 14 A. I do. 15 Q. Can you describe that? 16 A. I have, I guess you would 17 say credits on a pharmacology 18 toxicology degree, but I never 19 finished. 20 Q. And where were you studying 21 pharmacology? 22 A. At the time it was 23 Philadelphia College of Pharmacy and 24 Science, and now it's the University
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1 A. No. 2 Q. Any reason you can't 3 testify fully and truthfully? 4 A. No. 5 Q. What did you do to prepare 6 for today's deposition? 7 A. Not too much. I read the 8 complaint when -- way back when, and 9 just had some conversations with my 10 attorney, Mike. 11 Q. Okay. And I don't want to 12 know what you and your attorney 13 discussed but, outside of your 14 attorney, did you talk to anybody 15 else about today's deposition? 16 A. Other than I was -- other 17 than that I was having it, no. 18 Q. Just to let people know 19 where you were today if they tried to 20 find you? 21 A. Right, right. 22 Q. Okay. And you didn't 23 review any documents other than the 24 complaint you filed?	1 of Sciences in Philadelphia -- or 2 Pennsylvania. USP they call it. 3 Q. And when were you studying 4 there? 5 A. From '90 to '96, on and 6 off. 7 Q. Did you move to 8 Pennsylvania for college? 9 A. I was going to college 10 here, but I never moved here as a 11 result of it. 12 Q. What was your first job 13 after high school? 14 A. My first job after high 15 school? I don't even remember. 16 Q. Let's try going backwards 17 the other direction. 18 Are you currently 19 employed? 20 A. No, not right now. I just 21 got laid off in January. 22 Q. I'm sorry to hear that. 23 A. Thank you. 24 Q. What was your last

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1 employment? 2 A. Project manager for a 3 communications company. 4 Q. What company was that? 5 A. That was -- the name of the 6 company directly I worked for was 7 Adesta Broadband Networks, 8 A-D-E-S-T-A. 9 Q. And what kind of projects 10 did you manage there? 11 A. The project that I was 12 managing there was for a company 13 called Open Range Communications 14 Wireless Broadband Federally 15 Subsidized. 16 Q. How long had you been with 17 Adesta? 18 A. Six months. 19 Q. And where did you work 20 before Adesta? 21 A. Metro PCS. 22 Q. And what did you do there? 23 A. Project manager. 24 Q. Same types of projects?	1 Q. And since 1997, you have 2 been doing the same kind of project 3 management work? 4 A. Yes. At different levels, 5 but yes. 6 Q. Have you ever worked in 7 banking? 8 A. No. 9 Q. Financial services? 10 A. No. 11 Q. Ever worked in the credit 12 card business? 13 A. Excuse me, say that again. 14 Q. Credit card business? 15 A. No. 16 Q. Do you have any family 17 members who ever worked in banking? 18 A. Not that I know of. 19 Q. Any family members work in 20 financial services? 21 A. Not that I know of. 22 Q. Do you read any newspapers 23 regularly? 24 A. Not newspapers. Not
Page 11	Page 13
1 A. Yep. 2 Q. And how long were you at 3 Metro PCS? 4 A. Nine months. 5 Q. Did you have a series of 6 project management stints at 7 different broadband companies? 8 A. Yeah. And they are all 9 contract work, so that kind of gives 10 you an idea of the reason why they 11 are in short increments like that. 12 Most of them last between six and 18 13 months, these projects that we get 14 brought on for. 15 Q. When did you start doing 16 these projects? 17 A. I started in the telecom 18 industry in '97. 19 Q. And have you had any other 20 businesses or employment, other than 21 telecom, since '97? 22 A. No. I did have a business, 23 but it was in telecom, a consulting 24 business.	1 regularly at least. 2 Q. Do you read any newspapers 3 occasionally? 4 A. Yes. 5 Q. What do you read 6 occasionally? 7 A. I would say Daily News, New 8 York. 9 Q. Any other papers you read 10 occasionally? 11 A. No. 12 Q. And when you say 13 occasionally, is this -- 14 A. Maybe twice a month. 15 Q. Okay. Do you read any 16 magazines regularly? 17 A. No. 18 Q. Read any magazines 19 occasionally? 20 A. Trade magazines. 21 Q. Telecom trade magazines? 22 A. Yes. 23 Q. Any other magazines? 24 A. No.

<p>Page 14</p> <p>1 Q. Do you read any websites 2 regularly for news? 3 A. Yes. 4 Q. What websites? 5 A. Locally, NBC10.com. I 6 might look at the Wall Street Journal 7 site every now and then. And CNN 8 probably every other day or every 9 couple days to see -- to catch up on 10 the news. 11 Q. And how often would you say 12 you go to NBC10.com? 13 A. Usually daily for weather. 14 Q. Any TV news programs you 15 watch regularly? 16 A. Regularly, yeah. I guess 17 the morning six o'clock news I 18 usually, you know, watch for 20 19 minutes in the morning. 20 Q. Any particular station you 21 like? 22 A. Whatever doesn't have a 23 commercial when I have the remote in 24 my hand.</p>	<p>Page 16</p> <p>1 Q. And how often do you stay 2 there? 3 A. It depends on the time of 4 the year. You know, summertime, I'm 5 there for weeks at a time. 6 Wintertime, I'm there maybe three 7 times a month, four times a month. 8 Q. Do you go there on 9 weekends? 10 A. Yes, primarily. No, that's 11 not true, not just weekends. My 12 parents are down that way too, so 13 that's kind of where I stay when go 14 to visit my parents. 15 Q. Is it near the beach? 16 A. It is. 17 Q. Have you been involved in a 18 lawsuit before this one as a 19 plaintiff or a defendant? 20 A. No. 21 Q. And another question I need 22 to ask -- 23 A. I got sued. Excuse me. 24 Maybe I don't understand that</p>
<p>Page 15</p> <p>1 Q. Any other news programs you 2 watch regularly? 3 A. Not regularly, no. 4 Q. The six o'clock news, 5 that's local news? 6 A. Yeah. Traffic, you know, 7 things like that. 8 Q. Traffic, weather? 9 A. Yes. 10 Q. How long have you resided 11 at the Ellie Drive, Philadelphia 12 address? 13 A. January of '01 I bought the 14 house. 15 Q. And do you own the property 16 you mentioned in Ortley Beach? 17 A. My family does. 18 Q. Do you know who is the 19 owner of record? 20 A. I couldn't tell you. 21 Q. Do you have title to the 22 property? 23 A. No, I don't, not at this 24 point.</p>	<p>Page 17</p> <p>1 completely. 2 Q. Yeah, if you got sued that 3 would be -- 4 A. And it settled out of 5 court? 6 Q. Yep. 7 A. Okay. Then the answer to 8 that would be yes. 9 Q. When were you sued? 10 A. I guess we paid -- we 11 actually made the payment the end of 12 last -- somewhere of October of '08, 13 right in that area. 14 Q. Who sued you? 15 A. One of -- a neighbor of a 16 property that I own with somebody 17 else claims to have gotten hurt on 18 our property. 19 Q. Personal injury claims? 20 A. Um-hum. 21 Q. Yes? 22 A. Yes, please. I'm sorry. 23 Yes. 24 Q. What property was this?</p>

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<p>1 A. This was a property, 3426 2 East Clearfield Street in 3 Philadelphia.</p> <p>4 Q. Any other lawsuits you have 5 been involved in?</p> <p>6 A. No.</p> <p>7 Q. Have you ever been 8 convicted of a crime?</p> <p>9 A. I have a DUI. And I went 10 through the Pennsylvania ARD program, 11 which I'm not sure really where that 12 leaves it. I'm pretty sure it's 13 supposed to have been expunged, but I 14 never checked up on it.</p> <p>15 Q. How long ago was this?</p> <p>16 A. I think it was May of '05, 17 but I can't be 100 percent certain of 18 the day. It was either April or 19 May. '05 sounds like the right year.</p> <p>20 Q. Any other criminal 21 convictions?</p> <p>22 A. No.</p> <p>23 Q. Do you belong to any 24 consumer rights groups?</p>	<p>1 A. No. TD Bank, as I know it, 2 was what Commerce turned into. I 3 didn't even know that they were kind 4 of an entity of their own. Locally, 5 it was always Commerce, as far as I 6 know.</p> <p>7 Q. You had your checking 8 accounts at Commerce Bank?</p> <p>9 A. Um-hum.</p> <p>10 Q. Yes?</p> <p>11 A. Yes. Sorry.</p> <p>12 Q. It's a little unnatural.</p> <p>13 A. Yes.</p> <p>14 Q. Did you have savings 15 accounts at Commerce Bank?</p> <p>16 A. Yes.</p> <p>17 Q. When did you open your 18 accounts at Commerce Bank?</p> <p>19 A. I can't say for certain. I 20 mean, you guys probably know better 21 than I would. But it's got to be 22 going back to 2003, or even before 23 that. It's definitely before that, 24 because I remember going to Commerce</p>
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<p>1 A. No.</p> <p>2 Q. Have you ever contributed 3 money to any nonprofit whose mission 4 includes rooting out consumer fraud?</p> <p>5 A. No.</p> <p>6 Q. Ever buy a gift card from a 7 bank?</p> <p>8 A. Yes.</p> <p>9 Q. From which banks?</p> <p>10 A. From TD Bank. And I might 11 have bought a few when it was still 12 Commerce, I can't remember exactly. 13 I can't recall there for a while. 14 I'm not sure whether or not -- I 15 definitely bought the ones when they 16 TD Bank; whether or not they were 17 Commerce Bank ones that I bought as 18 well, I can't remember 100 percent.</p> <p>19 Q. Did you have an account at 20 Commerce Bank before it merged into 21 TD Bank?</p> <p>22 A. Oh, yeah.</p> <p>23 Q. Did you have an account at 24 TD Bank before the merger?</p>	<p>1 as a potential mortgage for when I 2 bought that house.</p> <p>3 So it might even have been 4 in the late '90s that I had accounts 5 there, because they were always a big 6 local Philadelphia presence, 7 Commerce.</p> <p>8 MR. LALLI: Could we go off 9 the record for one second?</p> <p>10 MR. BASSMAN: Sure. 11 (Discussion off the 12 record.)</p> <p>13 BY MR. BASSMAN:</p> <p>14 Q. Have you ever bought gift 15 cards from any banks other than TD 16 Bank or Commerce Bank?</p> <p>17 A. No. At least none that I 18 remember.</p> <p>19 Q. And, again, I just want to 20 find out to the best of your memory 21 today.</p> <p>22 A. Is American -- I think I 23 might have bought something with 24 American Express once.</p>

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<p>1 Q. Okay.</p> <p>2 A. Is that considered a bank</p> <p>3 as far as your question goes?</p> <p>4 Q. I wasn't thinking of it,</p> <p>5 but it's helpful to know. I was</p> <p>6 going ask you about credit cards</p> <p>7 next.</p> <p>8 A. Okay. Is that how they</p> <p>9 describe those, the American Express</p> <p>10 gift cards?</p> <p>11 Q. When did you buy an</p> <p>12 American Express gift card?</p> <p>13 A. I can't even remember the</p> <p>14 date.</p> <p>15 Q. Do you remember where you</p> <p>16 bought it?</p> <p>17 A. No.</p> <p>18 Q. Do you remember any details</p> <p>19 about the transaction of buying the</p> <p>20 American Express gift card?</p> <p>21 A. Not really, no. I think I</p> <p>22 might have bought them to go on</p> <p>23 vacation or something in lieu of like</p> <p>24 a traveler's check.</p>	<p>1 say I remember buying them once from</p> <p>2 TD Bank.</p> <p>3 Q. And how about from</p> <p>4 Commerce?</p> <p>5 A. I can remember one time at</p> <p>6 Commerce buying them.</p> <p>7 Q. And when did you buy gift</p> <p>8 cards at TD Bank?</p> <p>9 A. It would have been the</p> <p>10 holidays before this previous one, so</p> <p>11 what's that? Figure November,</p> <p>12 December of '08. Not this holiday,</p> <p>13 the previous one.</p> <p>14 Q. And when did you buy gift</p> <p>15 cards at Commerce?</p> <p>16 A. That would have been like I</p> <p>17 guess that same holiday time of like</p> <p>18 '06, '07.</p> <p>19 Q. When you bought gift cards</p> <p>20 at TD, which -- physically which</p> <p>21 branch did you go?</p> <p>22 A. I'm pretty sure it was with</p> <p>23 one on Frankford. It's like the 6500</p> <p>24 block of Frankford Avenue in</p>
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<p>1 Q. How many times did you buy</p> <p>2 gift cards from TD or Commerce?</p> <p>3 A. It's a guess, but maybe</p> <p>4 three.</p> <p>5 MR. LALLI: Can you -- I'm</p> <p>6 sorry. I'm just going to object.</p> <p>7 Can you flush that question</p> <p>8 out?</p> <p>9 MR. BASSMAN: Sure.</p> <p>10 BY MR. BASSMAN:</p> <p>11 Q. What I mean by times --</p> <p>12 MR. LALLI: Just, can you</p> <p>13 do Commerce and then TD?</p> <p>14 MR. BASSMAN: Sure.</p> <p>15 MR. LALLI: Just so we have</p> <p>16 it clear.</p> <p>17 MR. BASSMAN: Sure.</p> <p>18 BY MR. BASSMAN:</p> <p>19 Q. How many times did you buy</p> <p>20 gift cards from TD Bank? And by</p> <p>21 times, I mean each discrete purchase</p> <p>22 time, regardless of how many cards</p> <p>23 you bought at that one time.</p> <p>24 A. At TD Bank, I'm going to</p>	<p>1 Philadelphia.</p> <p>2 Q. And do you recall</p> <p>3 physically which branch you bought</p> <p>4 the Commerce gift cards in?</p> <p>5 A. No, that's going back. It</p> <p>6 would be a guess.</p> <p>7 Q. Would it have been a branch</p> <p>8 in Philadelphia?</p> <p>9 A. Most likely.</p> <p>10 Q. Starting with the first</p> <p>11 purchase, the ones at Commerce Bank,</p> <p>12 the time you went to Commerce Bank,</p> <p>13 how many cards did you purchase that</p> <p>14 time?</p> <p>15 A. Probably two or three.</p> <p>16 Q. Do you recall what the</p> <p>17 denomination was?</p> <p>18 A. Totaling probably about</p> <p>19 either 100 or \$150.</p> <p>20 Q. Was that evenly split</p> <p>21 between the cards?</p> <p>22 A. Probably.</p> <p>23 Q. And why did you buy gift</p> <p>24 cards from Commerce at that time?</p>

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<p>1 A. Just to either give out as 2 gifts or to have, you know, in my 3 wallet.</p> <p>4 Q. What do you mean when you 5 say to have in your wallet?</p> <p>6 A. In lieu of cash.</p> <p>7 Q. The gift cards you bought 8 from Commerce Bank, did you, in fact, 9 give those away to people?</p> <p>10 A. Yeah. I would say yes.</p> <p>11 Q. You gave all of them away?</p> <p>12 A. From what I remember.</p> <p>13 Q. Do you remember to whom you 14 gave them?</p> <p>15 A. Not the Commerce ones, no. 16 That's going back quite a ways.</p> <p>17 Q. Were these personal gifts 18 or were they gifts related to your 19 business work?</p> <p>20 A. It might have been people 21 that I come across in my business. 22 And it might have been just for 23 somebody that did a favor for me, as 24 a thank you.</p>	<p>1 now.</p> <p>2 A. Um-hum.</p> <p>3 Q. For those signs, do you 4 remember anything other than they 5 said no fees, no costs gift cards?</p> <p>6 A. No. It's all I remember.</p> <p>7 Q. Did you see any other 8 advertisements outside of -- and this 9 is going back to the time when you 10 bought the Commerce gift cards.</p> <p>11 A. Right.</p> <p>12 Q. Had you seen any other 13 advertisements for Commerce gift 14 cards outside of the posters and 15 signs in the branch?</p> <p>16 A. I'm pretty sure I remember 17 seeing some billboards along 95.</p> <p>18 Q. Do you remember what the 19 billboards said?</p> <p>20 A. No, I don't remember.</p> <p>21 Q. Anything -- any other 22 advertising you saw?</p> <p>23 A. Possibly on TV, but I'm not 24 sure.</p>
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<p>1 Q. And how did you find out 2 about Commerce Bank's gift card 3 program?</p> <p>4 A. It was pretty heavily 5 advertised. I mean, you couldn't not 6 see a billboard when you walked into 7 the branch. I remember there were 8 posters up on the wall, a big sign 9 out in the front.</p> <p>10 Q. What do you remember the 11 posters in the branch saying about 12 the gift card program?</p> <p>13 A. No-fee, no-cost gift cards.</p> <p>14 Q. Do you remember anything 15 else from what was on those posters 16 and signs?</p> <p>17 A. At the time of the TD ones, 18 I remember the green and the white, 19 because it was pretty close from when 20 it just changed over from the red and 21 the blue, I guess it was. There 22 being a little bow.</p> <p>23 Q. I just want to focus on the 24 Commerce time, before the TD right</p>	<p>1 Q. Anything else?</p> <p>2 A. No.</p> <p>3 Q. And, again, it's just 4 whatever you remember. So if you 5 don't remember, that's perfectly 6 fine.</p> <p>7 A. Right, that's pretty much 8 the answers. I really, other than 9 those couple of things, I can't think 10 of anything else I would have saw.</p> <p>11 Q. Any reason that you bought 12 gift cards as opposed to some other 13 type of gift at the time? This is, 14 again, the Commerce bank.</p> <p>15 A. Any reason?</p> <p>16 Q. Yeah.</p> <p>17 A. No.</p> <p>18 Q. Did the advertising that 19 you saw for Commerce Bank's gift 20 cards influence your decision about 21 whether to buy them?</p> <p>22 A. Sure. You see no fee, no 23 cost.</p> <p>24 Q. And what did you understand</p>

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<p>1 no fee, no cost to mean?</p> <p>2 A. That that card was</p> <p>3 essentially going to be worth what I</p> <p>4 paid for it. I was paying a premium</p> <p>5 to have the card. In my mind it was</p> <p>6 kind of the equivalent to cash.</p> <p>7 Q. You were not going to have</p> <p>8 to pay a purchase fee?</p> <p>9 A. Right. Nor would it lose</p> <p>10 any value.</p> <p>11 Q. When you bought your</p> <p>12 American Express gift card, was there</p> <p>13 a purchase fee?</p> <p>14 A. I don't think so.</p> <p>15 Q. When you went to buy the</p> <p>16 gift cards at Commerce Bank, I assume</p> <p>17 you went physically into the branch</p> <p>18 that day to buy the cards?</p> <p>19 A. I would assume that's</p> <p>20 correct.</p> <p>21 Q. And did you meet with a</p> <p>22 customer service representative?</p> <p>23 A. From what I remember -- as</p> <p>24 opposed to who?</p>	<p>1 conversation?</p> <p>2 A. "May I please have three</p> <p>3 gift cards?"</p> <p>4 I mean other than that, no,</p> <p>5 not really. It was a normal</p> <p>6 transaction like any other</p> <p>7 transaction, and nothing really</p> <p>8 stands out about it.</p> <p>9 Q. When you bought the gift</p> <p>10 cards, do you remember what kind of a</p> <p>11 package they came in?</p> <p>12 A. Not the Commerce ones.</p> <p>13 Q. And, again, thank you for</p> <p>14 clarification. I was just asking you</p> <p>15 about the Commerce ones right now.</p> <p>16 For the Commerce cards that</p> <p>17 you purchased, do you remember</p> <p>18 reading any materials that came with</p> <p>19 the package, whatever form it was?</p> <p>20 A. No. I wouldn't have read</p> <p>21 anything that came with it.</p> <p>22 Q. Why not?</p> <p>23 A. They're gift cards.</p> <p>24 Q. Do you recall that there</p>
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<p>1 A. I wouldn't know. 2 Q. And, again, this is another 3 one I understand you may not know, so 4 this is just the best of your 5 knowledge. 6 A. Okay. 7 Q. After you gave away the 8 cards that you bought from Commerce 9 Bank, were any of those cards lost or 10 stolen? 11 A. I have no idea. 12 Q. The second time you bought 13 gift cards you said was from TD Bank 14 in the holiday season of 2008? 15 A. Correct. 16 Q. And why did you buy gift 17 cards then? 18 A. Same thing. You see the 19 promotion and you just, I guess, kind 20 of figure to do it while you are 21 standing in line to do your other 22 banking. 23 Q. And how many cards did you 24 buy at that time from TD?</p>	<p>1 to give the cards to Mr. DiGiovanni 2 after you bought them? 3 A. Oh, probably within a 4 couple of weeks, within 14 days. 5 Q. By the way, I think I 6 forgot to ask. 7 When you bought the 8 Commerce cards, how long a gap was 9 there between the time you bought 10 them and the time you gave them away? 11 A. I'm going to have to answer 12 I don't know. Like I said, that was 13 quite a while ago. 14 Q. Would it have been within, 15 you know, a month or so? 16 MR. LALLI: Objection. 17 THE WITNESS: I really 18 couldn't say. 19 BY MR. BASSMAN: 20 Q. Going back to the TD 21 purchase in 2008. 22 You remember going into the 23 branch on Frankford Avenue to buy 24 those?</p>
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<p>1 A. I think I bought three. 2 Q. Do you recall what the 3 denominations were? 4 A. I'm pretty sure they were 5 probably three \$50 cards, or in that 6 general area. 7 Q. And did you give each of 8 those cards away? 9 A. I did. 10 Q. To whom did you give them? 11 A. I gave all of them to the 12 same person, a friend of mine, Rich. 13 Q. What is Rich's last name? 14 A. DiGiovanni. D-I, capital 15 G, I-O-V-A-N-N-I. 16 Q. And is Mr. DiGiovanni 17 someone you work with? 18 A. No, a friend, a college 19 friend, or a friend since college. 20 Q. Personal friend? 21 A. Um-hum. 22 Q. Yes? 23 A. Yes. 24 Q. And how long did you wait</p>	<p>1 A. Yes. 2 Q. And did you go to the 3 branch that day specifically to buy 4 gift cards or to do other business? 5 A. Other business as well. 6 Q. And you noticed the signs 7 up and decided to buy gift cards? 8 A. Yep. 9 Q. What signs do you recall 10 seeing in the branch? 11 A. The same theme. No-fee 12 check cards. No fee, no cost. I 13 can't remember exactly what it said. 14 MR. LALLI: You just said 15 check cards. 16 THE WITNESS: Did I? 17 MR. LALLI: Yeah. 18 THE WITNESS: Gift card, 19 check card, I mean -- 20 MR. LALLI: I just want it 21 to be clear, that's all. 22 THE WITNESS: If you say I 23 said it, I did. It's synonyms in my 24 head.</p>

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<p>1 BY MR. BASSMAN:</p> <p>2 Q. Regardless of what you may</p> <p>3 have just said a minute ago, do you</p> <p>4 remember the sign talking</p> <p>5 specifically about gift cards?</p> <p>6 A. Yeah. And so much so that</p> <p>7 there was like ribbons and bows and</p> <p>8 stuff on it, which kind of gives you</p> <p>9 the idea of a gift.</p> <p>10 Q. And these were the signs</p> <p>11 you remember were that green and</p> <p>12 white?</p> <p>13 A. Right.</p> <p>14 Q. Around the time that you</p> <p>15 bought the gift cards from TD Bank,</p> <p>16 2008, had you seen any other</p> <p>17 advertising for TD gift cards outside</p> <p>18 of the branch?</p> <p>19 A. I mean, nothing that I can</p> <p>20 really remember specifically. I</p> <p>21 remember it was a huge campaign, and</p> <p>22 everybody was giving them to one</p> <p>23 another.</p> <p>24 Q. But you don't remember</p>	<p>1 or --</p> <p>2 A. Three separate boxes.</p> <p>3 MR. LALLI: Barak, do you</p> <p>4 want to use the exemplar?</p> <p>5 MR. BASSMAN: Let's hold</p> <p>6 off for now on the exemplar. Maybe a</p> <p>7 little later.</p> <p>8 MR. LALLI: Okay.</p> <p>9 MR. BASSMAN: I might save</p> <p>10 that for Steve since he is a huge fan</p> <p>11 of the exemplar. I may want to be</p> <p>12 here for that.</p> <p>13 MR. LALLI: He does like</p> <p>14 explaining it on the record, doesn't</p> <p>15 he?</p> <p>16 BY MR. BASSMAN:</p> <p>17 Q. The three separate boxes</p> <p>18 that you got the gift cards in from</p> <p>19 TD Bank, what color were they?</p> <p>20 A. I believe they were green</p> <p>21 and black.</p> <p>22 Q. And did they have an</p> <p>23 elastic ribbon around them?</p> <p>24 A. Maybe a gold one, yeah.</p>
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<p>1 seeing any specific newspaper ads,</p> <p>2 billboards, anything like that?</p> <p>3 A. No.</p> <p>4 Q. And I think you said</p> <p>5 earlier, you bought your TD gift</p> <p>6 cards from the teller?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall if the teller</p> <p>9 was a man or a woman?</p> <p>10 A. No.</p> <p>11 Q. When you bought the cards</p> <p>12 from the teller, do you remember any</p> <p>13 of the details of that conversation?</p> <p>14 A. Nothing more than just</p> <p>15 asking for the cards and getting</p> <p>16 them, and maybe making a deposit or</p> <p>17 withdrawal or whatever I was doing.</p> <p>18 Q. Nothing more specific?</p> <p>19 A. No.</p> <p>20 Q. When you bought the TD gift</p> <p>21 cards, what kind of a package did</p> <p>22 they come in?</p> <p>23 A. Those were in a box.</p> <p>24 Q. Were all three in one box</p>	<p>1 It's hard to say. I really don't</p> <p>2 remember exactly. I don't remember</p> <p>3 if the ribbon was a picture of a</p> <p>4 ribbon or if it was a physical</p> <p>5 plastic, like elastic ribbon around</p> <p>6 it. I don't remember.</p> <p>7 Q. Did you open any of the</p> <p>8 boxes?</p> <p>9 A. No.</p> <p>10 Q. Did you see what was put in</p> <p>11 the boxes before you got them?</p> <p>12 A. Yeah. I must have opened</p> <p>13 them to see if the cards were in</p> <p>14 there.</p> <p>15 Q. And did you open them after</p> <p>16 you came home to see if the cards</p> <p>17 were in there?</p> <p>18 A. I probably would have did</p> <p>19 it before I left.</p> <p>20 Q. When you opened the boxes</p> <p>21 to see if the card was there, did you</p> <p>22 notice any other material in the box?</p> <p>23 A. No. The packing material</p> <p>24 that it came in.</p>

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1 Q. Did you notice any insert 2 or paperwork in there? 3 A. No. 4 Q. Anyplace where you could 5 write To, From, gift message, 6 something like that? 7 A. Not that I remember. 8 Q. And, again, to the best of 9 your knowledge, were any fees ever 10 charged against those gift cards that 11 you bought from TD Bank? 12 A. I wouldn't know. 13 Q. Did Mr. DiGiovanni ever 14 tell you that fees were charged 15 against those cards? 16 A. No. 17 Q. Did you ever ask him? 18 A. No. 19 Q. Did Mr. DiGiovanni ever 20 tell you that he had any trouble 21 using the gift cards you gave him? 22 A. No. 23 Q. Do you know if he kept the 24 gift cards himself or gave them to	1 Q. Where in New Jersey? 2 A. I think Blackwood, the name 3 of the town is, I'm not sure exactly, 4 or Deptford. I've only been there 5 once or twice. I don't even know the 6 address. 7 Q. Do you know his parents' 8 names? 9 A. Mr. and Mrs. DiGiovanni. 10 Not to be a wise ass, but -- 11 Q. I take it you don't know 12 their first names? 13 A. No, I don't. 14 Q. By the way, after you 15 bought your gift cards from Commerce 16 Bank, did you have any other contact 17 in any way with Commerce Bank about 18 those gift cards? 19 A. No. 20 Q. Same question for TD Bank. 21 A. No. 22 Q. Did you ever call any 23 customer service lines at TD or 24 Commerce about the gift card program?
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1 anybody in turn? 2 A. I have no idea. 3 Q. After you gave him the gift 4 cards, did you ever talk to him about 5 them again? 6 A. No. 7 Q. When you gave 8 Mr. DiGiovanni the gift cards that 9 you bought from TD, did you give him 10 the gift cards in the same boxes that 11 TD gave them to you in or did you 12 repackage the card? 13 A. Same boxes. 14 Q. Did you take anything out 15 of the boxes? 16 A. No. 17 Q. By the way, does 18 Mr. DiGiovanni live in Philadelphia? 19 A. No. He's got an Delaware 20 address. 21 Q. Where does he live? 22 A. Right now him and his wife 23 are split, so he's been staying with 24 his parents in New Jersey.	1 A. No. 2 Q. Have you ever accessed -- 3 did you ever access the Commerce Bank 4 website? 5 A. Yes. 6 Q. Did you ever read anything 7 on the website about gift cards? 8 A. Not that I remember. 9 Q. Did you ever access the TD 10 Bank website? 11 A. Yes. 12 Q. Ever read anything on the 13 TD Bank website about gift cards? 14 A. Not that I remember. 15 Q. And when you bought the 16 gift cards at Commerce, was the 17 amount deducted from your checking 18 account, the amount that it cost you 19 to buy the card? 20 A. What, the value of the 21 card? 22 Q. Yes. 23 A. I don't know if it was 24 deducted or if I had brought cash to

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<p>1 the teller. I don't remember. In 2 either case, I don't remember. 3 Q. So you might have bought 4 the gift cards with cash, it might 5 have been deducted, you can't recall? 6 A. Correct. 7 Q. And for the gift cards that 8 you bought from TD Bank, did you ever 9 come to learn if any of them were 10 lost or stolen? 11 A. No. 12 Q. I assume -- my question is 13 a little ambiguous. 14 No, you never learned 15 that that happened? 16 A. Correct. Not only did I 17 never learn that that happened, I 18 have no idea whether it happened or 19 not. 20 Q. Okay. How come you haven't 21 bought any gift cards since holiday 22 season 2008? 23 A. You know, frankly, you hear 24 about fees like that, and it's not</p>	<p>1 the value of the gift card, did you 2 warn Mr. DiGiovanni that there might 3 be fees? 4 A. No. 5 Q. Why not? 6 A. Why embarrass myself? 7 Q. Were you at all concerned 8 that he wouldn't use the cards fast 9 enough, the fee would kick in, and he 10 would be upset with you for not 11 telling him about it? 12 MR. LALLI: Objection. 13 BY MR. BASSMAN: 14 Q. You can answer. 15 A. I still wouldn't at that 16 time, and neither do I know now, what 17 the fee structure was, how much value 18 was being lost from cards. So, no, I 19 didn't. 20 Q. By the time you had heard 21 that there might be fees associated, 22 these rumors that there might be fees 23 associated with the gift cards that 24 you bought from TD Bank, had you</p>
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<p>1 what you assumed it was, so you 2 wouldn't make that purchase again. 3 Q. How did you hear about 4 fees? 5 A. Like I said earlier, I 6 can't really remember exactly where I 7 heard it, but I heard people talking 8 about these cards losing value over 9 time. 10 Q. Do you remember 11 approximately when you first heard 12 that? 13 A. That same -- right after I 14 bought those TD -- the last TD Bank 15 cards; so the holiday season, not 16 this one past, the one before. So 17 what's that, '08. 18 Q. Do you remember any 19 specific person who made these 20 comments to you? 21 A. No, I can't remember who 22 said it. I'm trying to think of it. 23 Q. After you heard these 24 rumors about fees that might eat up</p>	<p>1 given the cards away already? 2 A. Yes. 3 Q. Did you call anyone at TD 4 Bank to ask them if there were fees 5 associated with the cards you bought? 6 A. No. 7 Q. Did you go back to the 8 branch to ask? 9 A. No. 10 Q. Why not? 11 A. It wasn't a big enough 12 issue in my life at the time to kind 13 of pursue it. You know, I was pretty 14 busy. I didn't know if it was true 15 or not. It just wasn't -- it was the 16 holiday season. It wasn't my top 17 three -- you know, list of three 18 things to do. 19 Q. And did you do anything 20 around this holiday season 2008 to 21 follow-up on these rumors, any kind 22 of investigation? 23 A. Other than talking to a few 24 friends of mine, and finally talking</p>

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1 to Michael, who I knew is an attorney 2 and who was kind of dialed into these 3 things. 4 MR. LALLI: When you say 5 Michael, can you just clarify which 6 Michael? 7 MR. BASSMAN: Sure. 8 BY MR. BASSMAN: 9 Q. Michael, I assume, is 10 Michael Berman? 11 A. Correct. 12 Q. Your counsel in this case? 13 A. Yes. 14 Q. When did you first meet 15 Mr. Berman? 16 A. I can't recall a specific date. 17 Q. Have you known him more 18 than ten years? 19 A. No. 20 Q. More than five years? 21 A. Yes. 22 Q. How did you meet him? 23 A. Through mutual friends.	1 that junction. 2 Q. Did you have any 3 conversations with Mr. Berman about 4 gift cards before you retained him? 5 A. No. 6 Q. By the way, have you ever 7 read any press releases issued by 8 Commerce or TD Bank about gift cards? 9 A. Read a press release? No. 10 Q. Have you ever read any 11 articles in a publication called 12 E-Commerce Times? 13 A. No. 14 Q. You mentioned earlier you 15 don't understand exactly how the fee 16 structure would work on Commerce or 17 TD gift cards. 18 Do you have any 19 understanding as to what fees may 20 have applied to the Commerce Bank 21 gift cards that you bought? 22 A. No. 23 Q. Do you have any 24 understanding as to what fees may
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1 Q. Was this the time when 2 Mr. Berman owned a restaurant in 3 Philadelphia? 4 A. Before. 5 Q. And you stayed in touch 6 with him over the years? 7 A. I have. 8 Q. And do you recall 9 approximately when you first 10 contacted Mr. Berman about your 11 concerns about gift card fees in 12 particular? 13 A. It would have been the 14 holidays of '08. 15 Q. He was one of the people 16 you called up when you started 17 hearing these rumors? 18 A. Right. Because if anybody 19 I knew was going to have an answer to 20 it or tell me where to get an answer, 21 it was going to be Mike. 22 Q. And when did you retain him 23 to represent you as your lawyer? 24 A. Pretty much at that, at	1 have applied to the TD Bank gift 2 cards that you bought? 3 A. No. 4 Q. And just to clarify my 5 question, I don't mean what fees may 6 have actually been charged, but what 7 was potentially chargeable. 8 A. And the answer is still no. 9 Q. Okay. Did you ever receive 10 a gift card yourself? 11 A. Yes. 12 Q. How many? 13 A. More than I can count. 14 Quite a few. I'll say at least ten, 15 if not more. 16 Q. And do you remember from 17 what banks they were? 18 A. They were all from TD Bank, 19 with the exception of one or two of 20 those American Express ones. 21 Q. Do you remember who gave 22 you the TD gift cards? 23 A. The biggest giver of them 24 was a friend of mine, Harry Smith, or

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<p>1 actually a business acquaintance, 2 Harry Smith.</p> <p>3 Q. When you say Mr. Smith was 4 a business acquaintance, can you 5 explain --</p> <p>6 A. He was one of the general 7 contractors I managed.</p> <p>8 Q. And did you have any 9 personal relationship with Mr. Smith?</p> <p>10 A. As far as a business 11 relationship, it was personal, to say 12 hi, go out for drinks, one another's 13 birthday parties.</p> <p>14 Q. Is it your understanding 15 that he gave you -- Mr. Smith gave 16 you these gift cards in order to 17 further the business relationship?</p> <p>18 A. I don't know why he gave 19 them to me. I mean, I don't know 20 what his motive was for giving them 21 to me.</p> <p>22 Q. I'm just asking your best 23 understanding.</p> <p>24 MR. LALLI: Objection.</p>	<p>1 which would have been like Sprint PCS 2 or Nextel or Verizon. These general 3 contractors are contractors that bid 4 directly to the client to do and they 5 win work.</p> <p>6 And as a kind of a, I guess 7 as a representative of the client, I 8 manage their work and just make sure 9 that they are meeting, you know, 10 quality and on schedule.</p> <p>11 Q. And do you recall when you 12 received these TD Bank gift cards?</p> <p>13 A. It's going to be the 14 holidays going back just about every 15 year from '05 on, '06 on.</p> <p>16 Q. So you recall in '05, in 17 '06, in '07, in '08, each year 18 receiving TD Bank gift cards?</p> <p>19 A. Yep.</p> <p>20 Q. What about the last holiday 21 season in '09?</p> <p>22 A. This past one this, year?</p> <p>23 Q. Yeah.</p> <p>24 A. I have received no gift</p>
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<p>1 He's answered the question. 2 You can answer again.</p> <p>3 THE WITNESS: Right. I 4 mean, I really don't know why, you 5 know -- people give things away at 6 the holidays. For what reason, you 7 know, people do what they do, I have 8 no idea.</p> <p>9 BY MR. BASSMAN:</p> <p>10 Q. Besides Mr. Smith, who else 11 gave you a TD gift card?</p> <p>12 A. Multiple contractors that I 13 would have managed. That was kind of 14 like for, you know, those few years 15 there that seemed to be what 16 everybody was giving.</p> <p>17 Q. And, again, these were 18 contractors you worked with in your 19 business?</p> <p>20 A. That I managed, correct.</p> <p>21 Q. When you say managed them, 22 could you explain that?</p> <p>23 A. I represented the carriers 24 in most part, in most instances,</p>	<p>1 cards this year. With the exception 2 of some restaurant gift cards, which 3 I don't know if that's in the same 4 category.</p> <p>5 Q. Yeah, we can leave those 6 aside.</p> <p>7 A. Okay.</p> <p>8 Q. But no bank gift cards in 9 2009?</p> <p>10 A. No.</p> <p>11 Q. To the best of your 12 knowledge, focusing on the cards you 13 received, did any of the cards you 14 received have fees charged against 15 them?</p> <p>16 A. I really wouldn't know.</p> <p>17 Q. Did you ever have any 18 difficulties spending or using the TD 19 Bank gift cards you received?</p> <p>20 A. No.</p> <p>21 Q. Did you use the entire 22 value of the gift cards that you 23 received within 12 months of getting 24 them?</p>

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<p>1 A. I wouldn't know if I was 2 able to use the entire value, because 3 I don't know whether or not any 4 deductions were made from it.</p> <p>5 Q. Let me rephrase my 6 question.</p> <p>7 Did you use any of the gift 8 cards to make a purchase that you -- 9 and, again, focusing on the gift 10 cards you received -- more than a 11 year after they were given to you?</p> <p>12 A. I can't say for sure.</p> <p>13 Q. Did you ever have to get a 14 replacement card for one of the gift 15 cards that was given to you?</p> <p>16 A. Under what circumstances 17 would you get a replacement?</p> <p>18 Q. For instance, if your card 19 was lost or stolen.</p> <p>20 A. The answer to that's no. 21 But thinking about it, I wouldn't 22 know if I lost them. How would you 23 know if you lost something?</p> <p>24 Q. You don't remember</p>	<p>1 receiving them like that.</p> <p>2 Q. Do you remember receiving 3 TD Bank gift cards from Mr. Smith and 4 others in -- enclosed in holiday 5 cards, like the kind you buy at a 6 drugstore?</p> <p>7 A. Yes.</p> <p>8 MR. BASSMAN: We've been 9 going for a little bit, so why don't 10 we take a break?</p> <p>11 MR. LALLI: Sure.</p> <p>12 MR. BASSMAN: Off the 13 record.</p> <p>14 (Recess.)</p> <p>15 BY MR. BASSMAN:</p> <p>16 Q. Mr. Capizzi, you testified 17 earlier that you currently still have 18 checking and savings accounts at TD 19 Bank?</p> <p>20 A. And other accounts.</p> <p>21 Q. What other accounts do you 22 have?</p> <p>23 A. I have an IRA there, a SEP 24 IRA.</p>
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<p>1 contacting TD Bank and asking them to 2 replace a card?</p> <p>3 A. Correct.</p> <p>4 Q. Did you register yourself 5 as the owner of any of the TD Bank 6 gift cards that you received? By 7 that I mean register with TD Bank.</p> <p>8 A. I wouldn't know that that's 9 something -- why would you do that? 10 The answer's no.</p> <p>11 Q. Did you ever try to check 12 the balance on any of the cards that 13 you received?</p> <p>14 A. Not that I remember.</p> <p>15 Q. When you received TD Bank 16 gift cards, do you recall what 17 packaging you got them in?</p> <p>18 A. No.</p> <p>19 Q. Do you recall if you 20 received any TD Bank gift cards in 21 the green box that you saw when you 22 bought gift cards yourself from TD 23 Bank?</p> <p>24 A. No. I don't remember ever</p>	<p>1 Q. Any others?</p> <p>2 A. No. Just -- no, not now.</p> <p>3 Q. Do you know the numbers of 4 any of your accounts at TD Bank?</p> <p>5 A. No.</p> <p>6 Q. Do you have a debit card 7 with you from TD Bank?</p> <p>8 A. Maybe.</p> <p>9 Q. Is maybe yes?</p> <p>10 A. Maybe is I don't know. I 11 would have to look in my wallet.</p> <p>12 Q. Could you please take a 13 look in your wallet?</p> <p>14 A. Sure.</p> <p>15 No, I don't have one -- oh, 16 cancel that. Yes, I do.</p> <p>17 Q. Can you read off the 18 account number?</p> <p>19 A. 4482 7501 7662 0507.</p> <p>20 Q. And I notice that card 21 looks like it was issued originally 22 by Commerce Bank?</p> <p>23 A. It does, yes. It's 24 probably expired now. It never made</p>

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<p>1 it out of my wallet. 2 MR. BASSMAN: Is there an 3 expiration date on that, Mike? 4 MR. LALLI: Yeah, it's not 5 expired. 6 THE WITNESS: No? 7 MR. LALLI: August 11 is 8 the expiration date. 9 THE WITNESS: Oh, look at 10 that. 11 MR. BASSMAN: Thanks. 12 MR. HARVEY: Could I take a 13 look at that please? 14 MR. LALLI: Sure, Steve. 15 MR. HARVEY: Thank you. 16 BY MR. BASSMAN: 17 Q. Mr. Capizzi, on the 18 accounts you have with TD Bank, are 19 you the only person whose name is 20 listed on those accounts? 21 A. Yes. 22 Q. They're not joint with 23 anybody else? 24 A. No. Not that I know of, at</p>	<p>1 A. No. 2 Q. Did you supply any 3 documents to your attorneys in 4 connection with this lawsuit? 5 A. No. 6 Q. Did you ever contact any 7 state or federal government agency in 8 connection with gift card fees? 9 A. No. 10 Q. Have you ever reviewed any 11 written materials from any state or 12 government agency or official about 13 gift card fees? 14 A. The only thing I could 15 think of, and I'm not even sure if it 16 fits, is the paperwork for this 17 lawsuit. 18 Q. Anything else? 19 A. No. 20 Q. And when you say the 21 paperwork for this lawsuit, are you 22 thinking of anything other than the 23 complaint that you filed? 24 A. Just that --</p>
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<p>1 least. I'm no great financier. 2 Q. Do you currently possess 3 any documents related to any of the 4 gift cards that you bought or 5 received? 6 A. No. 7 Q. And by documents that could 8 be a receipt, a bank statement that 9 would show a deduction that was made 10 on your account to buy the card. Any 11 document. 12 A. Not that I could think of, 13 no. I mean, it's possible that it's 14 in a stack of papers somewhere, but 15 nothing that I'm aware of. 16 Q. Have you searched your 17 records to see if you have any 18 documents relating to your gift cards 19 that you bought or received? 20 A. No. 21 Q. Do you recall specifically 22 retaining any documents related to 23 any of the gift cards you bought or 24 received?</p>	<p>1 THE WITNESS: Is that what 2 that is, Mike, that you read me that 3 day that we reviewed, was the 4 complaint, right, what it's called? 5 I'm really not sure of the 6 terms of all the different paperwork, 7 but it was the complaint as far as I 8 know it. 9 BY MR. BASSMAN: 10 Q. And when you received gift 11 cards, I think you mentioned earlier 12 they came in drugstore-type greeting 13 cards? 14 A. From what I remember. And 15 I can't say that they all came that 16 way. Some might have been handed to 17 me. 18 Q. Just handed to you without 19 any packaging? 20 A. Correct. 21 Q. And did any of the cards 22 that you received come with any terms 23 and conditions, like a separate 24 document setting out terms and</p>

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<p>1 conditions of the cards?</p> <p>2 A. Not that I remember, no.</p> <p>3 Q. Did any of the gift cards</p> <p>4 that you received come with any other</p> <p>5 sort of document or brochure that was</p> <p>6 prepared by TD Bank?</p> <p>7 A. Not that I remember.</p> <p>8 Q. When you received gift</p> <p>9 cards, did you try to spend them as</p> <p>10 soon as you received them, or do you</p> <p>11 recall putting any aside to spend</p> <p>12 later?</p> <p>13 A. Both.</p> <p>14 Q. How did you make those</p> <p>15 decisions?</p> <p>16 A. There was really not too</p> <p>17 much thought given to them.</p> <p>18 Q. Were there any gift cards</p> <p>19 that you received that you recall not</p> <p>20 using?</p> <p>21 A. No, but I can't say for</p> <p>22 certain. There could be one stuck in</p> <p>23 the back of a drawer somewhere that I</p> <p>24 don't know about.</p>	<p>1 being, you know, potentially</p> <p>2 embarrassed, over a card losing, you</p> <p>3 know, for a gift that you give, if</p> <p>4 you want to consider that harm, yes.</p> <p>5 If the cards I use lost</p> <p>6 value, which I can't say if they did</p> <p>7 or if they didn't, that would have</p> <p>8 been a harm.</p> <p>9 Q. Any other harm?</p> <p>10 A. Not that I could really</p> <p>11 think of. They went after this -- it</p> <p>12 seems they went after a whole pool of</p> <p>13 people and, you know, gathered a lot</p> <p>14 of fees that were unbeknownst to</p> <p>15 anyone.</p> <p>16 So am I harmed? Yeah, to a</p> <p>17 point. But I think bigger is the</p> <p>18 group that kind of has been taken by</p> <p>19 this.</p> <p>20 Q. And if I ask you the same</p> <p>21 question about TD Bank, would you</p> <p>22 give me the same answer?</p> <p>23 A. I would.</p> <p>24 Q. If there were any fees</p>
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<p>1 Q. And do you recall ever</p> <p>2 encountering any difficulties in</p> <p>3 trying to use a TD Bank gift card?</p> <p>4 A. No.</p> <p>5 Q. Do you think that Commerce</p> <p>6 Bank misled you in any way in</p> <p>7 connection with its gift card</p> <p>8 program?</p> <p>9 MR. LALLI: Objection.</p> <p>10 BY MR. BASSMAN:</p> <p>11 Q. You can answer.</p> <p>12 A. Sure. I mean, you see a</p> <p>13 sign that says no fees and you find</p> <p>14 out there's fees, you feel misled.</p> <p>15 Q. Anything else?</p> <p>16 A. No.</p> <p>17 Q. Same question for TD Bank.</p> <p>18 A. Same answer.</p> <p>19 Q. Did Commerce Bank do</p> <p>20 anything that harmed you?</p> <p>21 MR. LALLI: Objection.</p> <p>22 BY MR. BASSMAN:</p> <p>23 Q. You could answer.</p> <p>24 A. If you want to consider</p>	<p>1 charged on the cards that you</p> <p>2 purchased from either Commerce or TD</p> <p>3 Bank, would you like the court to</p> <p>4 order those fees be refunded to you</p> <p>5 or to the people to whom you gave the</p> <p>6 cards?</p> <p>7 MR. LALLI: Objection.</p> <p>8 THE WITNESS: I really</p> <p>9 don't know who should get that money</p> <p>10 back.</p> <p>11 BY MR. BASSMAN:</p> <p>12 Q. Do you have a personal</p> <p>13 opinion either way?</p> <p>14 A. No.</p> <p>15 Q. Would your answer change if</p> <p>16 I asked you about the cards you</p> <p>17 received as opposed to the cards that</p> <p>18 you purchased?</p> <p>19 MR. LALLI: Same objection.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. BASSMAN:</p> <p>22 Q. Same answer?</p> <p>23 A. Same answer.</p> <p>24 Q. If you win this case, what</p>

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<p>1 would you like the court to order TD 2 Bank to do?</p> <p>3 MR. LALLI: Objection.</p> <p>4 BY MR. BASSMAN:</p> <p>5 Q. You can answer.</p> <p>6 A. What would I like them to 7 do? I mean, I really can't say one 8 way or the other. That's for them to 9 decide what to do.</p> <p>10 Q. Do you have any personal 11 opinion?</p> <p>12 A. I'd like to see, you know, 13 the class be made whole. I'd like to 14 see people get what they expect.</p> <p>15 Q. You'd like to see the fees 16 refunded?</p> <p>17 A. Sure.</p> <p>18 Q. But you are not sure to 19 whom?</p> <p>20 A. Right. Yeah, I guess who 21 would you? I don't know.</p> <p>22 Q. Outside of the fees being 23 refunded, anything else -- and, 24 again, just asking you your personal</p>	<p>1 TD Bank?</p> <p>2 A. No, that would be no.</p> <p>3 Q. Outside of your attorneys, 4 whom have you spoken to about this 5 lawsuit?</p> <p>6 A. No one.</p> <p>7 Q. No one at all?</p> <p>8 A. Like I said earlier, only 9 to say that I was going to be busy 10 today because I was being deposed for 11 a court case that I was involved in. 12 I don't even know if I specified who 13 the court case was about.</p> <p>14 Q. Have you ever spoken to 15 Bradley Mann?</p> <p>16 A. No. I don't know who 17 Bradley Mann is.</p> <p>18 Q. Margaret Munthali?</p> <p>19 A. No.</p> <p>20 Q. Fern Rutberg?</p> <p>21 A. Excuse me?</p> <p>22 Q. Have you ever spoken to a 23 woman named Fern Rutberg?</p> <p>24 A. No.</p>
Page 71	Page 73
<p>1 opinion -- anything else that you 2 would like the court to order?</p> <p>3 A. I really don't have an 4 opinion either way. I mean, it's for 5 the court to decide.</p> <p>6 Q. Would you ever buy a gift 7 card again from TD Bank?</p> <p>8 A. No.</p> <p>9 Q. Never?</p> <p>10 A. No.</p> <p>11 MR. LALLI: Can you re-ask 12 that?</p> <p>13 THE WITNESS: Well, yeah.</p> <p>14 MR. LALLI: You said never, 15 and he said no. I just want to make 16 sure it's clear.</p> <p>17 BY MR. BASSMAN:</p> <p>18 Q. Would you ever again buy a 19 gift card from TD Bank?</p> <p>20 A. I'm going to say that the 21 better answer is I really can't say. 22 I don't know.</p> <p>23 Q. Do you have any current 24 plans to buy a gift card again from</p>	<p>1 MR. LALLI: Is her name 2 really that funny?</p> <p>3 THE WITNESS: It is kind 4 of.</p> <p>5 BY MR. BASSMAN:</p> <p>6 Q. Ever spoken to a woman 7 named Chawezi or Bertha Mwantembe?</p> <p>8 A. No, I have never spoken to 9 her.</p> <p>10 Q. And, finally, have you ever 11 spoken to a woman named Sandra 12 Elmoznino?</p> <p>13 A. No.</p> <p>14 Q. Do you have a Facebook 15 page?</p> <p>16 A. I do.</p> <p>17 Q. Have you ever posted 18 anything about this lawsuit on your 19 Facebook page?</p> <p>20 A. No.</p> <p>21 Q. Ever posted anything about 22 gift cards on your Facebook page?</p> <p>23 A. No.</p> <p>24 Q. Do you have a page on any</p>

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<p>1 other social networking site?</p> <p>2 A. LinkedIn, I think. I don't</p> <p>3 know if that's a page or a mention.</p> <p>4 I don't know. It's like -- do you</p> <p>5 know what LinkedIn is?</p> <p>6 Q. Yes.</p> <p>7 Outside of LinkedIn and</p> <p>8 Facebook, any other social networking</p> <p>9 sites?</p> <p>10 A. No.</p> <p>11 Q. Did you ever read any</p> <p>12 written representations from TD or</p> <p>13 Commerce Bank about the costs that</p> <p>14 they incur in maintaining or</p> <p>15 replacing gift cards?</p> <p>16 A. No.</p> <p>17 Q. Same question for oral</p> <p>18 representations?</p> <p>19 A. No.</p> <p>20 (Telephone interruption.)</p> <p>21 BY MR. BASSMAN:</p> <p>22 Q. You understand that in your</p> <p>23 complaint you are asking the court to</p> <p>24 appoint you as a representative of a</p>	<p>1 Commerce Bank and then TD Bank, do</p> <p>2 you receive monthly statements?</p> <p>3 A. Yes.</p> <p>4 Q. And you receive those</p> <p>5 monthly statements in the mail?</p> <p>6 A. Yes.</p> <p>7 Q. In any of the monthly</p> <p>8 statements from Commerce and TD Bank</p> <p>9 that have been mailed to you, were</p> <p>10 any advertisements for gift cards</p> <p>11 stuffed in or included?</p> <p>12 A. They might have been. I</p> <p>13 don't know.</p> <p>14 Q. You don't remember one way</p> <p>15 or the other?</p> <p>16 A. No. There's always so much</p> <p>17 stuff in those envelopes, you know,</p> <p>18 you kind of just tear them open and</p> <p>19 move on.</p> <p>20 Q. You don't remember any</p> <p>21 advertisements stuffed into your</p> <p>22 statements?</p> <p>23 A. No, not with my statements</p> <p>24 about gift cards. I think I've seen</p>
Page 75	Page 77
<p>1 class of other purchasers and holders</p> <p>2 of gift cards?</p> <p>3 A. Yes.</p> <p>4 Q. What do you understand your</p> <p>5 obligations to be as a class</p> <p>6 representative?</p> <p>7 A. To represent the class.</p> <p>8 Q. And what do you need to do</p> <p>9 to represent the class?</p> <p>10 A. Just be honest and answer</p> <p>11 your questions and show that what</p> <p>12 happened to me happened to a lot of</p> <p>13 other people. And I guess my</p> <p>14 situation is somewhat characteristic</p> <p>15 of what a lot of other people have</p> <p>16 been through.</p> <p>17 Q. Do you have any obligations</p> <p>18 to the other class members?</p> <p>19 A. Just to be honest and open</p> <p>20 and forthright.</p> <p>21 Q. Do you have any obligations</p> <p>22 to look out for their interests?</p> <p>23 A. Yes.</p> <p>24 Q. As an account holder at</p>	<p>1 ones about home equity loans.</p> <p>2 Q. I'm just asking --</p> <p>3 A. Maybe because that's what</p> <p>4 I've been thinking about recently.</p> <p>5 Q. I'm just asking about gift</p> <p>6 cards.</p> <p>7 When you purchased gift</p> <p>8 cards from Commerce Bank, was it your</p> <p>9 understanding that those cards were</p> <p>10 governed by a set of terms and</p> <p>11 conditions?</p> <p>12 A. I'm sorry. Say it again,</p> <p>13 please.</p> <p>14 Q. Sure. When you bought gift</p> <p>15 cards from Commerce Bank --</p> <p>16 MR. LALLI: I'm sorry. Are</p> <p>17 you limiting it just to Commerce?</p> <p>18 MR. BASSMAN: Just Commerce</p> <p>19 Bank for that first time.</p> <p>20 BY MR. BASSMAN:</p> <p>21 Q. Did you understand at that</p> <p>22 time that there was a set of terms</p> <p>23 and conditions that govern the cards?</p> <p>24 A. I don't think I -- no.</p>

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<p>1 Q. Did you give it any 2 thought? 3 A. I didn't give it any 4 thought. 5 Q. Would your answer change if 6 I asked you about your TD Bank gift 7 card purchase? 8 A. No. 9 Q. Same answer? 10 A. Yes. 11 Q. By the way, where does 12 Harry Smith live? 13 A. In Deptford, New Jersey, I 14 think. What exact town, I'm not 15 sure. But it's in South Jersey. 16 Blackwood, Deptford. 17 Q. That general area? 18 A. Washington -- I think maybe 19 Washington Township, actually. Yeah, 20 that's right, Washington Township. 21 Q. Does he have a work address 22 separate from his home? 23 A. Yes. 24 Q. What is his work address?</p>	<p>1 A. I'd rather not guess on 2 that. 3 Q. Do you remember any 4 particular person at Magnus & Sons 5 giving you the gift card? 6 A. No. 7 Q. Magnus & Sons, I assume, is 8 the name of a business? 9 A. Correct. 10 Q. Where is Magnus & Sons 11 located? 12 A. Folcroft, Pennsylvania. 13 Q. Do you know the street 14 address? 15 A. No. 16 Q. Did Mr. Smith tell you -- I 17 assume Mr. Smith did not tell you at 18 what branch he bought the gift cards 19 that he gave you? 20 A. You assume correctly. 21 Q. The answer would be the 22 same for Magnus & Sons? 23 A. Yes. I would not know what 24 branch they bought them from.</p>
<p style="text-align: center;">Page 79</p> <p>1 A. I don't know the number, 2 but it's Greentree Road in Washington 3 Township. The name of the business 4 is Excalibur. 5 Q. How do you spell Excalibur? 6 A. Like the sword, 7 E-X-C-A-L-I-B-U-R. There's swords 8 hanging all over the office. That's 9 all you think about when you walk in 10 there. 11 Q. He has a collection? 12 A. Yeah, he does. 13 Q. Do you remember the names 14 of any other the contractors who gave 15 you gift cards? 16 A. Yes. 17 Q. Who are they? 18 A. Magnus & Sons. 19 Q. Who else? 20 A. Let's just leave it to 21 those two right now, because anything 22 else is just speculation. 23 Q. It would be just a pure 24 guess?</p>	<p style="text-align: center;">Page 81</p> <p>1 Q. Outside of giving you the 2 card and wishing you happy holidays, 3 did you have any conversations with 4 Harry Smith about the terms or the 5 use of the gift cards? 6 A. No. 7 Q. Same answer for Magnus & 8 Sons? 9 A. Same answer. 10 Q. You mentioned earlier that 11 you felt like you might be 12 potentially embarrassed that the 13 cards that you gave to Mr. DiGiovanni 14 might incur fees. 15 A. Um-hum. 16 Q. Do you recall that 17 testimony? 18 A. I do. 19 Q. You didn't seek any medical 20 treatment in connection with that 21 potential embarrassment, did you? 22 A. No, I did not. 23 Q. Have you posted any 24 information about this lawsuit on any</p>

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1 website? 2 A. No. 3 MR. BASSMAN: Off the 4 record. 5 (Recess.) 6 MR. HARVEY: We didn't 7 produce any information related to 8 gift card purchases by Mr. Capizzi; 9 we didn't find any record of those. 10 Using the account number 11 that he just gave to me, which 12 apparently is a closed account, but 13 Mr. Bassman is going to ask him about 14 that, I just made a request to see if 15 they could use that number to 16 identify any gift card purchases. 17 And I should hear back what 18 the records say within -- I'm hopeful 19 within ten or 15 minutes by an 20 e-mail, and I'll let you know if we 21 have some information. 22 MR. LALLI: Okay. 23 MR. HARVEY: We did agree 24 to provide you information relating	1 Q. Did you close it? 2 A. No. 3 Q. What is your current 4 balance in your savings account with 5 TD Bank? 6 A. I couldn't tell you. 7 Q. Is it zero? 8 A. I have no idea. I haven't 9 looked. 10 Q. When was the last time you 11 checked? 12 A. The savings account, I 13 couldn't remember. I don't remember. 14 Q. Do you get monthly 15 statements for your savings account? 16 A. I don't know if they are 17 monthly or quarterly. 18 Q. You receive regular 19 statements throughout the year, 20 though? 21 A. Yes. 22 Q. Do you read them? 23 A. No, not always. 24 Q. When was the last time you
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1 to gift card purchases by any of 2 these -- or by any of these 3 plaintiffs, and that one we didn't 4 find. 5 But as I said, we may -- 6 with the use of that number, might be 7 able to get information that we 8 didn't have previously. 9 MR. LALLI: That's fine. 10 Me and Mr. Bassman spoke about it 11 earlier. Fine, on the same page. 12 BY MR. BASSMAN: 13 Q. Mr. Capizzi? 14 A. Yes. 15 Q. What is the current balance 16 in your checking account at TD Bank? 17 A. Negative 1,100. 18 Q. And when did you just incur 19 an overdraft? 20 A. Last month, I believe. A 21 month and a half ago. 22 Q. Is your checking account 23 still active with TD Bank? 24 A. I'm not sure.	1 deposited money into the savings 2 account? 3 A. I would say the last time 4 there was a deposit into that account 5 would have probably been in late 6 January, mid January. I had just 7 lost my job, that was going to be the 8 -- that's when the last payment would 9 have went in, would have been a 10 direct deposit from my last check. 11 Q. And your IRA with TD Bank, 12 what is the balance in that? 13 A. I'm going to assume 14 somewhere around 12,000, 13,000. 15 But, you know, they fluctuate with 16 the market. 17 Q. Right. Do you have your 18 IRA with TD AmeriTrade as opposed to 19 TD Bank? 20 A. No, I think it's with TD 21 Bank. I had opened it when it was 22 Commerce Bank. The account manager 23 is John Bang, I remember his name. 24 Q. How do you spell the last

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<p>1 name? 2 A. Bang, B-A-N-G. 3 Q. Would you remember was he 4 in a particular facility? 5 A. I met him at the branch on 6 Woodhaven Road. 7 Q. And what city and state? 8 A. In Philadelphia, 9 Pennsylvania. 10 Q. Do you recall when you 11 opened that account? 12 A. Probably end of year '06 13 for tax -- you know, I'm pretty sure 14 it was 2006. It might have been 15 2005. 16 Q. You mentioned that your 17 checking account is negative \$1,100. 18 Have you incurred any 19 overdraft fees? 20 A. Oh, yes. 21 Q. Is this the first time you 22 incurred overdraft fees on that 23 account? 24 MR. LALLI: Objection.</p>	<p>1 other disputes? 2 A. There were other times when 3 maybe I didn't like the outcome of 4 something, but to call it a dispute, 5 no. 6 Q. What didn't you like the 7 outcome of? 8 A. Maybe the way I was treated 9 at a branch or something like that. 10 Q. And what about the way you 11 were treated at a branch made you 12 unhappy? 13 A. It just may be the way I 14 was spoken to. A personal type of 15 thing, not a business procedure. 16 Q. Okay. Just you went in one 17 day to transact some business and the 18 teller happened to be rude? 19 A. Yes. 20 Q. Things alone those lines? 21 A. That would be an example, 22 yes. 23 MR. BASSMAN: Okay. Why 24 don't we go off the record.</p>
<p style="text-align: center;">Page 87</p> <p>1 BY MR. BASSMAN: 2 Q. You can answer. 3 A. Is it the first time? I'm 4 going to say this is the first period 5 of time I've received them, yeah. 6 Q. Okay. 7 A. It's always been that when 8 checking accounts went to zero, you 9 couldn't make any other withdrawals 10 from them. 11 Q. Outside of the overdraft 12 fee situation that happened just 13 recently and outside of the 14 allegations relating to gift cards in 15 this complaint, have you had any 16 other difficulties in your 17 relationship with Commerce Bank or TD 18 Bank? 19 MR. LALLI: Objection. 20 BY MR. BASSMAN: 21 Q. You can answer. 22 A. Any other difficulties? 23 I'd ask you to define difficulty. 24 Q. Sure. Have you had any</p>	<p style="text-align: center;">Page 89</p> <p>1 (Recess.) 2 MR. HARVEY: Using his 3 account number which he gave to me 4 just a few minutes ago, we found a 5 record of two gift cards for \$25 each 6 that were purchased on November 21, 7 2008. 8 They didn't have the time, 9 in the time we were given, to see the 10 transactions with those gift cards. 11 That information may be available, 12 and I'll investigate that and I'll 13 turn that over to you if it is. But 14 that's all I have right now. 15 MR. LALLI: Okay. That 16 corresponds with his testimony today. 17 MR. BASSMAN: We have no 18 further questions. 19 EXAMINATION 20 BY MR. LALLI: 21 Q. Angelo, I only have one 22 question, and I think you already 23 testified to it. 24 But do you promise to</p>

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2 fairly and adequately protect the
3 interest of the class?
4 A. I do.
5 MR. LALLI: That's it.
6 MR. BASSMAN: Thank you
7 very much.
8 (The deposition concluded
9 at 12:43 p.m.)

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1 WITNESS CERTIFICATION

2
3
4 I hereby certify that I
5 have read the foregoing transcript of
6 my deposition testimony, and that my
7 answers to the questions propounded,
8 with the attached corrections or
9 changes, if any, are true and
10 correct.

11
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15 DATE ANGELO CAPIZZI

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19 PRINTED NAME

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